

REMARKS

In the recent Office communication, the Examiner indicated that Applicant's reply filed on April 4, 2005 was not fully responsive to the prior Office Action because it presented new species Claim 5, where only generic claims were previously presented. The Examiner required Applicant select a specific species from Claim 5.

In compliance with the Examiner's requirement, Applicant provisionally elects with traverse the herbal component "*Nicotiana glauca*" recited in Claim 5. Claims 2-15 are considered to be readable on the elected species.

Notwithstanding the propriety of the election requirement for examination purposes, Applicant contends that he should be entitled to a consideration of related species falling within the scope of a generic inventive concept. Moreover, it would appear that a search and examination of the entire application could be accomplished without a serious burden on the Examiner since the multiple species of Claim 5 would seemingly encompass a common field of search.

Accordingly, it is respectfully requested that the Examiner withdraw the election requirement, and issue an action on the merits of all the embodiments presently in the case. Alternatively, should the Examiner maintain the requirement and make it final, Applicant awaits a complete action on the merits of the elected subject matter.

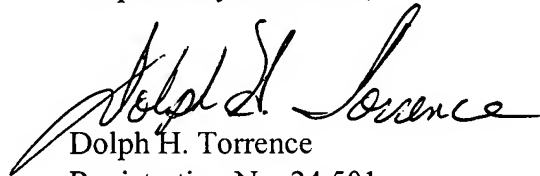
Application No.: 10/611,911
Art Unit: 1654

Attorney Docket No. 19641.06
Confirmation No. 5582

The remaining issues set forth in the Office Action dated November 2, 2004 have been addressed in the amendment filed on April 4, 2005.

For the foregoing reasons and for those previously presented, Applicant respectfully submits that the present application is in condition for allowance. If such is not the case, the Examiner is requested to kindly contact the undersigned in an effort to satisfactorily conclude the prosecution of this application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Dolph H. Torrence', is written over the typed name.

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